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The German Beast Unleashed: Kleist's *Hermannsschlacht* and the Suspension of 'Human Rights' in the Era of Nationalism

The German Beast Unleashed

Abstract:

This article scrutinises the aporetic confrontation of different ultimate values in Kleist's infamous *Die Hermannsschlacht*, namely nationalism and a basic notion of 'human rights'. Kleist's play does not settle for one of these priorities, but conceptualizes the nation as a facilitator, promulgator, and protector of rights and — at the very same time — as an inexorable principle of selection which ties the notions of exclusion and elimination closely to those of inclusion and participation. In this respect, *Die Hermannsschlacht* not only prepares and anticipates elements of Carl Schmitt's political theory, but also comes very close to Giorgio Agamben's analysis of sovereignty and the production of politically qualified life in his *Homo Sacer* series. However, it does so without completely abandoning the universal ideas of human rights.

Heinrich von Kleist, Ludwig Achim von Arnim, Nationalism, Human Rights, Agamben,

Kleist's infamous *Hermannsschlacht*, written in 1808 in the wake of the Prussian defeat by Napoleon's army at Jena and Auerstedt, has often been explored in its conspicuous proximity to the newly emerging technique of guerrilla warfare against the French in Spain. Carl Schmitt famously referred to it as 'die größte Partisanendichtung aller Zeiten',¹ while Wolf Kittler read it as an easily decipherable call for the long-awaited insurrection against the French occupation in Prussia.² Unsurprisingly, war, terrorism, transgression, and bestiality in the play have been prominent topics of research in recent scholarship. Amongst others, Peter Philipp Riedl has further highlighted the strong affinity of Hermann's decisionism to Schmitt's concept of the political,³ which had also been part and parcel of the dominant strand of the reception of *Die Hermannsschlacht* during the Third Reich.⁴

In the following, I will draw on Schmitt's work, but I will scrutinise his notion of the political in a slightly different context, namely against the backdrop of rival concepts of the law: it is, I contend, a specific, aporetic confrontation of different ultimate values which makes the play

¹ Carl Schmitt, *Zur Theorie des Partisanen: Zwischenbemerkung zum Begriff des Politischen* (Berlin: Duncker & Humblot, 1962), p. 15.

² Wolf Kittler, *Die Geburt des Partisanen aus dem Geist der Poesie: Heinrich von Kleist und die Strategie der Befreiungskriege* (Freiburg: Rombach, 1995).

³ Peter Philipp Riedl, 'Textures des Terrors: Politische Gewalt im Werk Heinrich von Kleists', *PEGS*, 78 (2009), 32–46.

⁴ Niels Werber, 'Kleists "Sendung des Dritten Reichs": Zur Rezeption von Heinrich von Kleists *Hermannsschlacht* im Nationalsozialismus', *Kleist-Jahrbuch* (2006), 157–70.

irresistibly complex and still fruitful for exploration. I would like to suggest that Kleist, transcending the question of war, more generally partook in a fundamental discussion of subjective rights, legitimacy, and sovereignty, thus analysing both legal and moral core questions of the time. Kleist acknowledges and integrates the notion of human rights, but paradoxically combines this idea with a surprisingly modern concept of power, which is not only very close to Schmitt's decisionism, but also to Giorgio Agamben's definition of sovereignty.

Since the play repeatedly undermines the clear difference between humans and animals, the divide between the two emerges as an explicit, political category. Agamben has a long-standing interest in this distinction between animals and humans, which is also reflected in his definition of bare life (*zoe*) and politically qualified life (*bios*). His notion that the sovereign power establishes and reproduces itself by differentiating between *zoe* and *bios* is crucial for my analysis of Kleist. What becomes particularly clear in *Die Hermannsschlacht* is that for Kleist sovereign violence is not founded on a pact, as contract theory would have it, but on a mechanism of power that resembles Agamben's notion of the 'exclusive inclusion of bare life in the state'.⁵ For Agamben, the exclusive inclusion is embodied in the figure of the *homo sacer*, which is taken from Roman Law and refers to human life included in the juridical order in the form of its exclusion (i.e. its capacity to be killed). The application of the law (the ban) constitutes the exclusion *from* the law. Bare life is thus not simple natural life (or animal life), but life that finds itself outside the law (and — as the exclusion is a consequence of the inclusion — simultaneously inside the law). *Zoe* — as opposed to politically protected, politically qualified life — 'is the always present and always operative presupposition of sovereignty'.⁶

Agamben here draws on Schmitt's decisionist understanding of law and sovereignty: 'The particular "force" of law consists in this capacity of law to maintain itself in relation to an exteriority. We shall give the name relation of exception to the extreme form of relation by which something is included solely through its exclusion.'⁷ For Schmitt, sovereignty is constituted in the 'state of emergency' (*Ausnahmezustand*), a state defined by the suspension, but not the abrogation of the law. This assessment strikingly resonates with both Hermann's veneration of the law and his simultaneous determination to break with almost any given moral principle in order to promote the foundation of 'Germania'. While Hermann's

⁵ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. by Daniel Heller-Roazen (Stanford: Stanford University Press, 1998), p. 107.

⁶ Agamben, *Homo Sacer*, p. 107.

⁷ Agamben, *Homo Sacer*, p. 18.

pragmatic and pithy analysis of sovereign power anticipates aspects of Agamben's ideas, it simultaneously runs counter to the critical thrust of the latter's appraisal. Agamben emphatically challenges the role of sovereign power as the ultimate guarantor (producer) of politically qualified life (in Kleist's case: rights).⁸ This critical deconstruction of sovereign power is articulated in *Die Hermannsschlacht* as well: unlike its protagonist Hermann, the play in fact retains an idea of humanity and human rights which precedes power/sovereignty/the law and is thus inviolable, as I will show in the following.

In view of the paradox the *Die Hermannsschlacht* presents, I will finally consider Ludwig Achim von Arnim's *Die Vertreibung der Spanier aus Wesel*, which mirrors the plot and principal topics of *Die Hermannsschlacht*, but arrives at different solutions for the problems charted in Kleist's play.

Kleist's play shows how Hermann incites the Germanic tribes to cast off the Roman yoke by resorting to radical and manipulative measures: people are — often quite graphically — dismembered, mutilated, and torn apart by animals. Beneath this gruesome plot, however, the play affords an insight into the clash of two comprehensive legal frameworks: nationalism and a basic notion of 'human rights'.⁹ In the eighteenth century, the longstanding general discourse on 'natural rights' culminated in the American Declaration of Independence and subsequently the *Declaration of the Rights of Man and Citizen* as one enduring result of the French Revolution. Simultaneously, nationalism as a new concept of collective identity started superseding the old concept of patriotism as a general, cosmopolitan virtue. While human rights revolve around the individual, nationalism is based on the idea of a nation state that protects and enhances the commonweal, if necessary at the expense of individuals (whether nationals or non-nationals). The state, however, also facilitates the implementation of rights which are otherwise not enforceable. Kleist's *Hermannsschlacht* clairvoyantly demonstrates how nationalism and modern individualism — produced and borne by the same fundamental societal restructuring — are ultimately grounded in opposing core values. In the course of the nineteenth century the nation eventually installed itself as a sacrosanct ultimate ideal, serving and protecting its populace as a collective within the framework of a nation

⁸ In *The Use of the Bodies* Agamben suggests that it is ultimately the deactivation of the division/relation of *zoe* and *bios* that would provide us with a way out of the dilemma of sovereign power that Kleist engages with as well. See Giorgio Agamben, *The Use of Bodies* (Stanford: Stanford University Press, 2015), §6.

⁹ These questions distinctly resonate with recent debates on this dichotomy, see e.g. Seyla Benhabib, *Another Cosmopolitanism* (Oxford: Oxford University Press, 2006), in particular pp. 17–20, and Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap, 2013).

state,¹⁰ as Dieter Langwiesche emphasizes: ‘Die Nation als Letztwert, der alle Forderungen rechtfertigt [...] — diese Vorstellung, die in der Ära der Französischen Revolution erstmals ihre Massensuggestion erprobte, setzte sich erst im Laufe des 19. Jahrhunderts als gesellschaftliche Mehrheitsposition durch.’¹¹

In the following I will refer to human rights as moral principles understood as inalienable, fundamental rights ‘to which a person is inherently entitled simply because she or he is a human being’¹² regardless of their nation or any other status. This is already partly expressed by Thomas Jefferson in the American Declaration of Independence: ‘We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.’ The *Declaration of the Rights of Man and of the Citizen* of 1793 and Thomas Paine’s *Rights of Man* of 1791 echo these ideas emphatically. I will try to show how the discourse of human rights is an essential strand in the action of *Die Hermannsschlacht*.

Kleist was familiar with the legal and philosophical complexities of this issue, as he had attended Ludwig Gottfried Madihn’s lectures on Natural Law in Frankfurt an der Oder and had also purchased the corresponding textbook *Grundsätze des Naturrechts*, in which Madihn explicitly states that war allows for ‘jedes Vertheidigungs- und Entscheidungsmittel, es mag noch so grausam scheinen als es will, gewöhnlich seyn oder nicht, und man kann keine *raison de guerre* eigentlich und anders annehmen, als wenn man darunter solche grausame und ungewöhnliche Mittel, die [...] nicht gerecht waren, zu verstehn pflegt’.¹³ Madihn’s clearly formulated notion of war as a state of (moral) exception certainly reverberates through Kleist’s play.

Generally, *Die Hermannsschlacht* is informed by Kleist’s own experiences in tumultuous times: the fictional Hermann turns out to be a devoted adherent of Kleist’s polemical manifesto ‘Katechismus der Deutschen’. Catechisms normally serve as teaching introductions to the (usually) Christian doctrine and are often presented in the form of questions followed by answers to be memorised, a format on which Kleist’s ‘Katechismus’ is unmistakably

¹⁰ See also Michel Foucault’s notion of *Staatsräson* and of governmentality which are shaped by the focus on government, sovereignty, disciplining, in short the productive steering of centripetal powers towards the ‘common good’ (prosperity, according to contemporary philosophers) all of which is regulated through population and economy; this also resonates with German ‘Staatszwecklehre’, concentrating on two primary functions of the state, security, and welfare.

¹¹ Dieter Langwiesche, *Nation, Nationalismus, Nationalstaat in Deutschland und Europa* (Munich: Beck, 2000), p. 17.

¹² Magdalena Sepúlveda and others, *Human Rights Reference Handbook*, 3rd edn, rev. (Ciudad Colon, Costa Rica: University of Peace, 2004), p. 9.

¹³ Ludwig Gottfried Madihn, *Grundsätze des Naturrechts zum Gebrauch seiner Vorlesungen: 1. Absolutes Naturrecht, 2. Hypothetisches Naturrecht* (Frankfurt/Oder 1789; 1794), pp. 174–75. See also Manfred Schneider, ‘Die Welt im Ausnahmezustand: Kleists Kriegstheater’, *Kleist-Jahrbuch* (2001), 104–19.

modelled. In a significant secular shift, though, Kleist replaces religious doctrine with a national dogma, leaving no doubt about the core values he intends to convey to his catechumens: ‘Du liebst dein Vaterland, nicht wahr, mein Sohn? [...] Warum liebst du es? Antw. Weil es mein Vaterland ist.’¹⁴ The tautological quality of this argument emulates the self-evidence of religious axioms. In the ‘Katechismus’, it becomes obvious that the crisis brought about by the Napoleonic Wars and occupation refers back to more significant values, such as God, fatherland, freedom, love, and faith.

In keeping with the pedagogical purpose of the ‘Katechismus’, Kleist’s Hermann is also intent on teaching the Germans a lesson. When he asks the leader of other German tribes whether they were willing to abandon their property, burn their land, and kill their livestock, their response is bewilderment: ‘Das eben, Rasender, das ist es ja, | Was wir in diesem Krieg vertheidigen wollen!’¹⁵ Hermann interjects: ‘Nun denn, ich glaubte, eure Freiheit wär’s’ (BKA, I, 7, p. 27). Like Hermann, Kleist understands ‘freedom’ as the most precious principle in the German Catechism by claiming that God prefers men prepared to die in pursuit of their freedom over abject slaves. I will come back to these quasi-religious connotations in the context of Arnim’s play.

In another famous journalistic piece, Kleist addresses the question ‘Was gilt es in diesem Kriege?’, answering it to the same effect with ‘Eine Gemeinschaft gilt es’ (BKA, II, 9, p. 159). For him, the collective can legitimately precede a proper constitution which formulates binding, legal structures. Once forged, this ‘community’ can shake off oppressive French rule. Hermann follows a similar logic and is willing to sacrifice basic moral notions in the process. He does not shy away from inflicting misery and pain on his people in order to instil and reinvigorate faith in their nation. Elisabeth Krimmer highlights what she perceives to be the fundamental principle in Hermann’s rhetoric. According to her, Germania does not originate

in a constitution or declaration of independence but rather comes into being through the beheading of a traitor to the German cause [...]. Hermann’s vision of Germania requires the constant re-affirmation of its reality through sacrifice. Rather than promising that war will cede to the reign of peace, the play suggests that the laws of war will replicate themselves in the order of the new state.¹⁶

¹⁴ Heinrich von Kleist, ‘Katechismus der Deutschen’, in *Sämtliche Werke: Brandenburger Ausgabe* [=BKA], II, 9, ed. by Roland Reuß and Peter Staengle (Frankfurt/Main: Stroemfeld/Roter Stern, 2007), p. 134.

¹⁵ Heinrich von Kleist, ‘Die Hermannsschlacht’, in *BKA*, I, 7, ed. by Roland Reuß and Peter Staengle (Frankfurt/Main: Stroemfeld/Roter Stern, 2001), p. 27.

¹⁶ Elisabeth Krimmer, ‘The Gender of Terror: War as (Im)Moral Institution in Kleist’s Hermannsschlacht and Penthesilea’, *GQ*, 81.1, (2008), 66–85 (p. 75).

Krimmer's pointed diagnosis, however, does not fully capture the structural ambiguity of Kleist's analysis. At the outset of his venture, Hermann develops a utopia remarkably different from his previously formulated, nationalistic outlook:

Wenn sich der Barden Lied erfüllt,
Und, unter *einem* Königscepter,
Jemals die ganze Menschheit sich vereint,
So läßt, daß es ein Deutscher führt, sich denken,
Ein Britt', ein Gallier, oder wer ihr wollt;
Doch nimmer jener Latier, beim Himmel!
Der keine andre Volksnatur
Verstehen kann und ehren, als nur seine. (BKA, I, 7, p. 24)

Hermann's condemnation of Roman aggression in the *Hermannsschlacht* corresponds to Kleist's comment in the 'Katechismus', according to which Napoleon is 'ein[], [...] der Hölle entstieg[er] Vaternördergeist, der herumschleicht, in dem Tempel der Natur, und an allen Säulen rüttelt, auf welchen er gebaut ist.' (BKA, II, 9, p. 144) Kleist's notion of nature as a temple (which is by definition sacred) is as instructive here as his postulate that human morality is based on natural pillars, on laws that must not be violated. In this semantic field, Napoleon is logically perceived as the devil incarnate insofar as he defiles natural laws. By waging an unprovoked war of conquest against the German tribes, the fictional Augustus in the *Hermannsschlacht* violates self-evident natural laws in a comparable manner.¹⁷

Meanwhile, the actual Roman protagonists in the play seem to be civilized human beings, firm believers in the sacred dignity of mankind and staunch defenders of the law (in the play the equivalent of Napoleon's *code civile*).¹⁸ There is nevertheless a noticeable difference between the principles the Romans preach and the way they apply them, as aptly expressed in Thusnelda's reaction to the executioner's holy axe: it is highly symbolic that the first ones to arrive in Hermann's camp, even before the Roman leader Septimius appears, are the lictors, carrying 'des Gesetzes heilg'es Richtbeil'. Thusnelda counters: 'Das Beil? Wem! Uns?' (BKA, I, 7, p.78) To the subjugated nation, the axe is bound to appear as threat; it does not

¹⁷ In this sense, in the *Katechismus*, the answer to the question of who started the German war against France must be: Napoleon.

¹⁸ See Elisabeth Fehrenbach, *Traditionale Gesellschaft und revolutionäres Recht: Die Einführung des Code Napoléon in den Rheinbundstaaten* (Göttingen: Vandenhoeck & Ruprecht, 1974)

represent a vehicle of law enforcement or protection, but rather a means of oppression. The play thus conceives of power in a deeply ambivalent way, broadly anticipating ideas formulated by Walter Benjamin in *Kritik der Gewalt*.¹⁹ The meaning of the axe — here metonymically connoting Roman law as such — can vary, so much so that Hermann demonstratively renounces Septimius' belief that certain laws are universal and inviolable, when he has him killed with no sign of hesitation or remorse. Septimius is aghast:

Wie, du Barbar! Mein Blut? Das wirst du nicht — !

Hermann. Warum nicht?

Septimius mit Würde. — Weil ich dein Gefangener bin!

An Deine Siegerpflicht erinner' ich dich!

Hermann (auf sein Schwert gestützt).

An Pflicht und Recht! Sieh da, so wahr ich lebe!

Er hat das Buch vom Cicero gelesen.

Was müßt' ich thun, sag an, nach diesem Werk?

Septimius. Nach diesem Werk? Armseel'ger Spötter, Du!

Mein Haupt, das wehrlos vor dir steht,

Soll deiner Rache heilig sein;

Also gebeut dir das Gefühl des Rechts,

In deines Busens Blättern aufgeschrieben!

Hermann (*indem er auf ihn einschreitet*).

Du weißt was Recht ist, du verfluchter Bube,

Und kamst nach Deutschland, unbeleidigt,

Um uns zu unterdrücken?

Nehmt eine Keule doppelten Gewichts,

Und schlägt ihn todt!

Septimius. Führt mich hinweg! — hier unterlieg ich,

Weil ich mit Helden würdig nicht zu tun!

Der das Geschlecht der königlichen Menschen

Besiegt, in Ost und West, der ward

Von Hunden in Germanien zerrissen (BKA, I, 7, p. 144).

¹⁹ Walter Benjamin again was obviously one of the central sources for Agamben's theory in *Homo Sacer*.

Cicero's *De officiis*, the book to which Hermann refers, emphasizes the importance of political rights and draws on the notion of natural law which applies to both humans and gods. It also implies that certain rights are inherent by virtue of human nature alone. For Hermann, however, chronology proves to be crucial here. By invading the Germanic countries, the Romans reveal the intrinsic limitation of their allegedly universal rights, which are apparently not moral instincts, ingrained in the 'pages of your bosom', as Septimius claims ('das Gefühl des Rechts, | In deines Busens Blättern'). Whilst Septimius holds them to be natural and self-evident, Hermann rejects this notion, when he implies that the Romans have forfeited this 'natural' entitlement. They have rather proved that the very rights that they postulate are not in effect *a priori*, but tied to conditions. With his strong attitude against Roman injustice Hermann admittedly takes the idea of universal rights seriously, but decides that they are, while worth striving for, suspendable under special circumstances. For him these seemingly fundamental rights the Romans invoke are not naturally in place, but inextricably dependent on power. For Hermann, they constitute a natural-political hybrid.

Although the theoretical concepts of nationalism on the one hand and certain inviolable individual rights on the other hand seem incompatible at first (as they both vie for priority here), they appear to be deeply co-dependent in their implementation: 'Germania', the play suggests, constitutes the framework within which justice and rights seem enforceable — not the Roman Empire with its claim to world domination and its biased, self-serving administration of justice.

Even though Hermann invokes the authority of nature, he seems to insinuate that the formation of a legal order is based on a decision, rather than a pre-existing norm. This political tendency places Hermann's tactics in the vicinity of Hobbes' formula '*authority not truth makes law*' and also chimes with Carl Schmitt's reflections on sovereignty. Schmitt famously states: 'Die Rechtsordnung wie jede Ordnung beruht auf einer Entscheidung und nicht auf einer Norm.'²⁰ While desirable, even basic rights are not a natural given, but indeed ultimately *positive* laws, i.e. human-made laws, 'statutes which have been laid down by a legislature, court, or other human institutions'. (*OED*)

As the political thus regulates the attribution of basic rights, according to this view, Kleist's play ventures into territory which has since been explored more fully by Giorgio Agamben. Agamben's distinction between *zoe* and *bios* too, is relevant to Kleist's play, insofar as his protagonists inhabit the threshold between humanity and bestiality. Bare life in Agamben's sense does not coincide with animal life; *zoe* is rather the life that is excluded from the

²⁰ Carl Schmitt, *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (Berlin: Duncker & Humblot, 1996), p. 16.

protective law. In *Die Hermannsschlacht* this very exclusion is over and over illustrated with animal similes. A fine line separates the two realms; and it is not always clear where it should be drawn. The action of the play is, as it were, poised upon the threshold between bare life and politically qualified life. Animal imagery in the play is central to the effect.

Some of this imagery derives from metaphors common in early modern political theory. Hermann is said to be both as cunning as a fox and as strong as a lion. (The lion skin he wears is noticed by Varus: ‘du dort im Fell des zott’gen Löwen’, (BKA, I, 7, p. 162.)²¹ The implications of this Machiavellian imagery cannot be overlooked; they feed into the political subtext of the play. But Hermann’s contained and controlled ferocity seems even closer to the notion of the ‘werewolf’ as defined by Agamben in *Homo sacer*. Agamben’s wolfman, as a hybrid of human and animal, banned from the city, relates directly to the issues broached in Kleist’s works; it not only describes the ‘threshold of indistinction and of passage between animal and man, physis and nomos, exclusion and inclusion [...]’. It also shines a light on

the Hobbesian mythologeme of the state of nature. [...] When Hobbes founds sovereignty by means of a reference to the state in which ‘man is a wolf to men,’ *homo hominis lupus*, in the word ‘wolf’ (*lupus*) we ought to hear an echo of the *wargus* and the *caput lupinem* of the laws of Edward the Confessor: at issue is not simply *fera bestia* and natural life but rather a zone of indistinction between the human and the animal, a werewolf, a man who is transformed into a wolf and a wolf who is transformed into a man.²²

When Agamben speaks of the ‘lupization’ of man and ‘humanization’ of the wolf,²³ he refers to the moment of potentiality of the state of exception which allows for both possibilities and touches directly on matters at stake in Kleist’s *Hermannsschlacht*: the notion of Hermann as a beast in multiple incarnations still anticipates Agamben’s notion of the werewolf that is neither human nor animal, but occupies the threshold between both as sovereign power. In exactly this sense Hermann appears as a sovereign in the shape of an often invoked animal-human hybrid, redefining the boundaries of the anthropological in the state of emergency. The

²¹ Niccolò Machiavelli, *Il Principe / Der Fürst*, trans. and ed. by Philipp Rippel (Stuttgart: Reclam, 2007), p. 137: ‘Da also ein Fürst gezwungen ist, von der Natur der Tier den rechten Gebrauch machen zu können, muß er sich unter ihnen den Fuchs und den Löwen auswählen; denn der Löwe ist wehrlos gegen die Schlingen und der Fuchs gegen Wölfe.’

²² Agamben, *Homo Sacer*., pp. 105–06.

²³ See also more generally on these ‘anthropological machines’: Giorgio Agamben, *The Open: Man and Animal* (Stanford: Stanford University Press, 2003).

image of the wolf in the play assumes a salient ambiguity: the Romans are referred to as ‘the wolf’, when one of the Germans stresses:

Da hast Du recht! Es bricht der Wolf, o Deutschland,
In deine Hürde ein, und deine Hirten streiten
Um eine Handvoll Wolle sich. (BKA, I, 7, p. 12)

It is not a coincidence that the speaker, one of the German chieftains, has the name Wolf. Structurally, this image of an unleashed predator holding brutal sway over the herds chimes with the notion of power as sheer force of conquest. Hermann plays at the unleashing of equal forces that can match the Roman onslaught from the start. Under the rubric of the wolf, the Germans and the Romans collapse into one. Below I will come back to the distinct attempt to blur the boundaries and to cast the suppressed German tribes as potential rulers of the future.²⁴ The concept Kleist proposes here does not follow the temporal logic and rationalised, self-interested legitimacy of contracts, but zeroes in on something ostensibly more organic, a notion of power and sovereignty which — following the logic of the play — proves to be pre-existent in the political, before any contract is concluded. Moreover, the constant focus on the animal-man threshold in *Die Hermannsschlacht* more generally brings the role of brute violence in regard to justice and power to the fore.

It is striking how many examples there are in the play of metaphorical metamorphoses of human beings into animals. The duped Roman general Varus, for instance, faces a sudden devastating change in status when Hermann announces his execution:

Ward solche Schmach im Weltkreis schon erlebt?
Als wär’ ich ein gefleckter Hirsch,
Der, mit zwölf Enden durch die Forsten bricht! — (BKA, I, 7, p. 164)

The most striking and significant case, however, is that of Thusnelda. I will not elaborate on the profound impact of gender characteristics in this process, as many scholars have covered this area extensively,²⁵ but will focus on the specific angle of Thusnelda’s transgression.

²⁴ This resonates with the notion of an expansive war Krimmer and Niels Werber highlight.

²⁵ See Krimmer, but also Barbara Vinken, *Bestien / Kleist und die Deutschen* (Berlin: Merve, 2011). Very instructive on this matter: Stefan Börnchen, ‘Translatio imperii: Politische Formeln und hybride Metaphern in Heinrich von Kleists Hermannsschlacht’, *Kleist-Jahrbuch* (2005), 267–84.

Oblivious to the political nexus, she intuitively advocates a concept of inherent *human* dignity. In this sense, she responds to Hermann's reservations against the Roman Ventidius:

Dich macht, ich seh', Dein Römerhaß ganz blind.
Weil als dämonenartig Dir
das Ganz' erscheint, so kannst Du Dir
Als sittlich nicht den Einzelnen gedenken.' (BKA, I, 7, p. 45)

Her benevolent assessment of the situation is partly owed to her own vanity, as Ventidius appears as an eager and admiring suitor. Thus the exact opposite of Hermann's position holds true for her: by focusing exclusively upon the individual she loses sight of the corrupt larger context. When she feels slighted and betrayed by Ventidius, her reaction is excessive. It is Hermann again, who skilfully manipulates her into a frenzy — the she-bear that she unleashes to tear Ventidius apart obviously embodies her fury to such extent that Thusnelda feels transformed into an actual animal: Ventidius 'hat zur Bärin mich gemacht! | Arminius will ich wieder würdig werden!' (BKA, I, 7, p. 150)

Thusnelda's analysis coincides with the official conclusion of the play, according to which her metamorphosis is reversible. Kleist himself explained it the following way: 'meine Thusnelda ist brav, aber ein wenig einfältig und eitel, wie heute die Mädchen sind, denen die Franzosen imponieren; wenn solche Naturen zu sich zurückkehren, so bedürfen sie einer grimmigen Rache.'²⁶ Before Thusnelda becomes the unforgiving she-bear, Hermann ironically refers to her as Ventidius's sheep, ready for shearing. Ventidius later incurs her unyielding wrath for allegedly intending to steal her blond hair and sending a stolen lock as a sample to Rome. Whether or not this is true, Hermann has carefully prepared his wife for this incident, calmly explaining the Roman bestiary to her:

Ich weiß nicht, Thuschen, wie du heut dich stellst. [...]
Nimmt August nicht dem Elephanten
Das Elfenbein, das Öl der Bisamkatze,
Dem Panthertier das Fell, dem Wurm die Seide?
Was soll der Deutsche hier zum voraus haben? (BKA, I, 7, p. 68)

²⁶ Cf. letter from Dahlmann to Gervinus, 26 October 1840, in *Heinrich von Kleists Lebensspuren: Dokumente und Berichte der Zeitgenossen*, ed. by Helmut Sembdner (Munich: dtv Klassik, 1996), no. 319.

This exploitation and submission of animals is the flipside of the coin: the exploited animals (Thusnelda and by extension the Germans) turn into unleashed beasts prepared and able to rout the exploiter. According to Hermann humanity can be reinstated after such forays into bestial wildness, just as the former humiliating meekness can be eclipsed by untempered bestiality. For him, the threshold between bare life and politically qualified life is a question of power. Here the text becomes truly multifaceted, because Thusnelda's fate runs counter to her own words. Before she exacts her vengeance, her maid Gertrud begs her to abandon her plan:

Die Rache der Barbaren sei Dir fern!

Es ist Ventidius nicht, der mich mit Sorg' erfüllt;

Du selbst, wenn nun die Tat gethan,

Von Reu' und Schmerz wirst du zusammenfallen. (BKA, I, 7, p. 150)

As predicted by the maid, Thusnelda does display signs of distress, as she remains more or less silent for the rest of the play. The notion that one can suspend humanity (even in the form of a cathartic act of revenge that helps to reinstate one's former dignity) to resume it at a later stage therefore becomes doubtful. The Thusnelda episode reveals the ramifications of nationalistic transgression. With rare lucidity, the play indicates that terror as a means outlasts the ends for which it was originally intended. Far from being a paean to nationalism, *Die Hermannsschlacht* presents an ambiguous, troubling account of a time in which the sources and the structures of legitimation were unsettled and unstable, and theories of justice and power, and natural rights and their limitations, were hotly contested.

Kleist simultaneously prepares the ground for Carl Schmitt and — *ante rem* — problematizes his ideas. For Schmitt the political is a public, relational structure between people. Inasmuch as the state precedes its constitution, no contract can indeed found the state — and again the political takes precedence over the constitutional. Hermann's notion of Germania as a Utopia, a non-place, refers to the notion of the political, which again logically presupposes the founding of a Germanic state or, to put it differently, the unification of the Germanic tribes.

Hermann's appalling tactic of dismembering the young Hally, who has been raped by the Romans and killed by her relatives,²⁷ before sending the body parts on to the divided Germanic tribes strikingly symbolises the need for an organic re-unification, a reassembly of

²⁷ This tragic incident in fact highlights in which saturated, intertextual context *Die Hermannsschlacht* is placed: Hally refers back to the political connotations of Schiller's *Fiesko* and Lessing's *Emilia Galotti*, as much as Thusnelda is connected with Penthesilea (which reworks and inverts Schiller's *Johanna von Orleans*).

a naturally coherent, corporeal unity. Hally's corpse stands for the self-evident bodily cohesiveness of the German tribes. This constant recourse to the Romantic body (as elaborated by Ethel Matala de Mazza)²⁸ assumes an equally vampiristic and christological quality when Fust offers to drink Hermann's blood:

Fust. Das Blut des besten Deutschen fällt in Staub. [...]

Gueltar. Komm her, soll ich das Blut dir saugen?

Fust. Mir laß — mir, mir! (BKA, I, 7, p. 166)

The political seems pre-established through this ambiguous corporeal, organic, even sacred unity, as Hermann points out: 'Es soll kein deutsches Blut, An diesem Tage, von deutschen Händen fließen.' (BKA, I, 7, p. 147)²⁹ Once the state, the politically defined unit, is established, rights and rules take precedent. For Schmitt the value of the state consists in the task, 'Recht in der Welt zu verwirklichen, wodurch der Staat zum Mittelpunkt der Reihe: "Recht, Staat und Individuum" wird'.³⁰ In this sense, 'der Staat als Macht und daher als Nicht-Recht steht dem Rechte gegenüber, um es zu verwirklichen.'³¹ Schmitt is very clear about a difference between the abstract and the concrete individual.³² 'Die Kantische Forderung, daß der Mensch immer selbst nur Zweck sei und nie zum Mittel werden dürfe, gilt daher nur für den zum reinen Vernunftwesen gewordenen Menschen, nicht für ein Exemplar irgendeiner biologischen Gattung.'³³ This is where Kleist and Schmitt diverge irreconcilably. While aspects of Schmitt's theory of the political seem to be prefigured in Kleist's *Hermannsschlacht*, the play is distinctly less coherent than Schmitt's ideas in *Wert des Staates*; with Thusnelda another perspective is admitted to the multiple voices that permeate the play.³⁴

²⁸ Ethel Matala de Mazza, *Der verfasste Körper: Zum Projekt einer organischen Gemeinschaft in der Politischen Romantik* (Rombach Verlag: Freiburg, 1999).

²⁹ As the political exists prior to the unity of the nation, contract theories — as founding myths — become irrelevant: 'Wird der Staat auf einen *Vertrag* gegründet und soll er dadurch "entstanden" sein, daß mehrere Individuen zusammentraten und sich zu einem Gesamtwesen verbanden, das einen selbständigen gemeinsamen Willen, eine *volonté générale* darstellt, so verweist ein solcher "Vertrag" bereits auf eine vorausgesetzte Rechtsordnung.' Carl Schmitt, *Wert des Staates* (Berlin: Duncker & Humblot, 2004), pp. 106–7.

³⁰ Schmitt, *Wert des Staates*, p. 2.

³¹ Schmitt, *Wert des Staates*, p. 86.

³² 'Für den Staat ist das Individuum als solches der zufällige Träger der allein wesentlichen Aufgabe, der bestimmten Funktion, die es zu erfüllen hat. Prinzipiell kann der Staat daher keinen für unersetzlich oder unvertretbar halten und von dieser allgemeinen Erscheinung des Funktionärs, der fungiblen Persönlichkeit, vom Beamten aus, ließe sich der Sinn des Staates viel tiefer erklären, als durch seine Herabwürdigung zum negotiorum gestor der allein wichtigen "Persönlichkeit".' Schmitt, *Wert des Staates*, p. 86.

³³ Schmitt, *Wert des Staates*, p. 89.

³⁴ According to the legal and philosophical discourses around 1800, the repeatedly formulated sacredness of the law is inextricably connected with the new significance of the individual, the *Subjekt*, as Hegel points out — this

Although Kleist and Schmitt share many ideas, Kleist's play captures other strands of thought as well in a paradoxical inventory of contradictory ultimate values. Unlike Schmitt, Kleist thus faces a dilemma, as he touches on a delicate structural problem in his poetic equation: are there any inviolable, *a priori* natural rights bestowed on every single individual in virtue of being human which cannot be infringed? For Hermann at least the notion of enforceable rights constitutes an aim that can only be achieved within the framework of the Germanic nation. By contrast, the Thusnelda episode suggests that these values are pre-existent, consequently they challenge the triumphant ending of the play: how can the nation that Hermann wishes to (re-)establish as a political unity be based on and justified by basic values which he has compromised during this same quest?³⁵ As the implications of Thusnelda's story cannot be contained, Hermann's strategy is manifestly paradoxical and cannot be unpacked with the help of Schmitt's terminology or, for that matter, by treatises on natural law. Kleist's panoramic play instead reveals a broader range of legal and moral repercussions of the socio-historical changes in the preceding century. The metaphorical structure of the play contributes to this complexity, as does the multi-valency of the characters. The *Landesvater* Hermann is a shrewd pragmatist who willingly puts his people and his family at risk, and disregards or rather exploits their emotional weakness and vulnerability. The gendering in the play is striking and many scholars have pointed out the connotations of the geographic specificities (Lippe)³⁶ and the obvious concept of phallic power embodied in the phalanx of Romans and Germans claiming this specific area. Symbols of aggression are both ubiquitous and ambiguous — the differences between the Romans and the Germans, but also definitive concepts of right and wrong dissolve on a figurative level: for instance, when the she-bear that represents the blond-curved Thusnelda is described as 'zottelschwarze Bärin von Cheruska' (BKA, I, 7, p. 155) in an obvious reference back to the quality of Roman hair as depicted by Hermann.³⁷

Neither does the play fully subscribe to the idea of partisan warfare in the face of obvious injustice, nor does it put Hermann unequivocally in the dock as a case of 'totale

is why human rights are referred to as *subjektive Rechte* in German; these general rights, H. L. A. Hart suggests, 'do not arise out of any special relationship or transaction between men.' H. L. A. Hart, 'Are there any Natural Rights?', *Philosophical Review*, 64.2 (1955), 175–91 (p. 188).

³⁵ Christoph Menke observes a gap ('Lücke') in terms of the justification of the law. Modern rights define and protect something before or outside the law. The radically self-referential logic seems astonishingly similar to the dynamics of sovereignty as diagnosed by Schmitt and Agamben. See Christoph Menke, *Kritik der Rechte* (Frankfurt am Main: Suhrkamp, 2016).

³⁶ Börnchen, pp. 277–79.

³⁷ Börnchen, p. 183: 'So ist es nur konsequent, daß in der Bärenszene nicht nur Thusnelda und die Bärin metaphorisch verschmelzen, sondern gleichzeitig, über das tertium comparationis des schwarzen Haares und "der ersten Frau des Reichs" (SW, 9, I, 597), die "Bärin von Cheruska" Thusnelda und, als Lupa Capitolina, die römische Kaiserin Livia.'

Pervertierung',³⁸ as Barbara Vinken suggests. It rather dwells extensively on the confusing disconnection between natural laws and the notion of sovereignty, the limitation of power by inviolable rights and the overriding concept of the 'state of emergency' which entitles the sovereign to define even fundamental rights as positive law. Hermann's nation is forged in reference to values that the very foundational act violates in the first place. Kleist does not resolve this paradox, but places it at the centre of his play.

I would like to draw attention to another play that incorporates Kleistian ideas, but finds an interesting way of reconciling these seemingly unbridgeable differences. In Arnim's play *Die Vertreibung der Spanier aus Wesel* of 1813³⁹ the protagonist Peter Mülder conspires with a Dutch force to liberate Wesel from the cruel Spanish occupation regime in the midst of the Thirty Years' War.

Caroline Pross has already proposed a framework for discussing the two plays (as well as Brentano's *Viktoria und ihre Geschwister*).⁴⁰ She suggests that in these works the coming of a new and better time is indefinitely postponed:

Für die Zeit, auf deren Ereignisse sie dem Bekunden ihrer Verfasser nach so genau 'berechnet' sind, erfüllen daher *Die Hermannsschlacht*, *Viktoria und ihre Geschwister* und *Die Vertreibung der Spanier* ihr erklärtes Ziel nur bedingt: ein positives Modell darzustellen für die aktuellen Umbrüche und staatlichen Transformationen dieser Zeit. Die 'Verschiebungen', denen die Darstellung des Neuanfangs und der Begründung in allen drei Dramen unterliegt und mit denen diese zugleich die Darstellungsvorgaben des 'Festspiels' auf bezeichnende Weise nicht erfüllen, geben dies zu verstehen.⁴¹

But she argues that Arnim's play gets closer to the goal than Kleist's:

Anders als bei Kleist gelangt die Transformation des Gemeinwesens in *Die Vertreibung der Spanier* auf diese Weise zwar zu einem gewissen Abschluß, und die Zeit des Aufstands und des Umbruchs wird mit einem Ende versehen. Der 'Augenblick' der Einsetzung des Neuen,

³⁸ Vinken, p. 92.

³⁹ Ludwig Achim von Arnim, *Die Schaubühne: Historisch-kritische Ausgabe* (Weimarer Arnim-Ausgabe, 13), ed. by Yvonne Pietsch (Tübingen: Niemeyer, 2010).

⁴⁰ Caroline Pross, 'Verschobene Anfänge: Bruch und Begründung in Kleists *Hermannsschlacht*, Arnims *Die Vertreibung der Spanier* und Brentanos *Viktoria und ihre Geschwister*', *Kleist-Jahrbuch* (2003), 150–64.

⁴¹ Pross, p. 163.

bleibt der Darstellung aber auch bei Arnim auf Dauer entzogen: Wann genau er stattfindet und von wem er ausgeht, lässt sich aus dem Text des Dramas nicht entscheiden.⁴²

The importance of this suspended utopian structure in times of war is indisputable.⁴³ However, I would argue for an even clearer resemblance between Kleist's and Arnim's plays. Arnim's *Vertreibung* follows Kleist's *Hermannsschlacht* in several respects, for instance, in the disparity between the proclaimed Catholic virtues of the Spanish occupying forces and their actual immorality, constantly on display in their violation of common ethical standards, and eventually culminating in an unprovoked murder of a respectable citizen of Wesel. Like Kleist, Arnim also highlights the close proximity to current events on the continent. The play alludes to Napoleon's economic blockade, but also to the notion that 'heiliges Recht' was violated by the Napoleonic Wars:

Zerrissen ist der Handlung Band, das in dem Austausch aller Gaben Gottes die verschiedenen Völker in einem Wohlseyn fest verknüpfte. Die Spanier kränken uns dies heilige Recht zu allem, was die Erde trägt. (Arnim, p. 170)

The text works with these notions of basic rights, including religious freedom as a form of political right which ought *a priori* to be protected from any interference. While Kleist grapples with the inherent contradictions of modern law and subjective entitlements which prioritise the individual over the collective, Arnim is eager to suggest a specific coherence which blocks out the intricacies of the modern nation state in favour of a national-religious triumph.

The difficulties are glossed over rather than actually addressed, often simply by a radical change of register or by employing comic elements. This holds true in particular for an encounter between Susanna, Peter's future wife, and Lozan, the Gubernator, who chases her relentlessly. Unlike the drastic undoing of Ventidius, the downfall of Susanna's suitor is truly farcical, when Lozan is humiliated by the fact that Peter takes Susanna's place on Lozan's lap while the latter is asleep. The lecherous Gubernator does not encounter an unfettered she-bear, but is nevertheless punished for his untoward lust by facing his rival rather than the desired woman. Without experiencing any physical harm, the Gubernator is humbled to such an extent that he wishes for his own death (a desire the Weseler citizens do not satisfy either).

⁴² Pross, p. 158.

⁴³ See also Claudia Nitschke, *Utopie und Krieg bei L. Achim von Arnim* (Tübingen: Niemeyer, 2004).

This element of comedy stands in stark contrast to the martial statements in which Peter Mülder is described as the hammer of God. It is essential for the eventual triumph of Wesel with which its traditional rights and privileges (and religion) are reinstated that the *Vertreibung*, the actual expulsion of the Spanish is neither shown nor properly narrated in the play. Moreover, Hermanns's manipulative excess and its consequences are dispensable in Arnim's play.

It is mainly the 'right belief' that leads to the quasi-national victory against the Spanish, as one of the councillors stresses: 'Gott hat die Kett gesprengt, woran die Spanier das freie Wesel legten, doch ihr wart Gottes Hammer. Mensch hilf dir selbst so hilft dir Gott.' (Arnim, p. 202) The political Protestantism which is central to the play functions as a transitional model of justice. The play makes reference to modern democratic processes, when it describes the unanimous election of Mülder as mayor of Wesel by the people, again not without conflating the notion of divine legitimacy and democracy, when Mülder accepts the office since 'des Volkes Mund ist Gottes Mund'. (Arnim, p. 202)

The notion of individual political rights is alluded to, but quickly covered over by the reference to the vital *singulare tantum*: 'Volk'. Protestantism and nationalism seem inextricably connected here. The national version of Protestantism which Arnim describes merges the above-mentioned divergent values of the nation and of the individual into a superior and incontrovertible model of divine justice.

Arnim's play proves instructive in this context, as it rectifies what Arnim may have perceived as a major transgression in Kleist's play by resolving the opposition between the collective and the individual into the notion of the sacred. The play quite expertly identifies the inherent problem in *Die Hermannsschlacht* and rhetorically nullifies it. By simply positing the sacredness of every single person as a religious, God-given fact, Arnim ends Kleist's disturbing 'epistemic regress'.⁴⁴

While Arnim seeks to purge these dissonances that also appear in Kleist's play in favour of a transcendent legitimation of the political community of Wesel, the *Hermannsschlacht* zeroes in on modern paradoxes; it oscillates between the superiority of a sacred community and the primacy of natural rights which ought to constitute the limit to the power of said community. Kleist's play ultimately does not settle for one of these priorities. It clearly conceptualizes the nation as a facilitator, promulgator, and protector of rights and — at the very same time — as

⁴⁴ Incidentally, Hans Joas's recent book on the genealogy of human rights similarly attributes seminal value to this very notion of sacredness in the process of promoting and implementing human rights. Hans Joas, *Die Sakralität der Person: Eine neue Genealogie der Menschenrechte* (Frankfurt/Main: Suhrkamp, 2011).

an inexorable principle of selection which ties the notions of exclusion and elimination closely to those of inclusion and participation: in this respect, *Die Hermannsschlacht* not only prepares and anticipates elements of Schmitt's political theory, but comes also very close to Agamben's analysis of sovereignty and the production of politically qualified life in his *Homo Sacer* series.

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